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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,974	01/11/2000	MATTHEW TODD HUPP	7905	4998

27752 7590 11/29/2001

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/29/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/480,974

Applicant(s)

Hupp

Examiner

Castellano

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 9/14/01 and 10/17/01.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-13 is/are pending in the application.
- Of the above claim(s) 11-13 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-10 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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1. Claims 11-13 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 3.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification doesn't state what is stated in lines 3-5 of claim 2 that said track and said seal being congruent for a sector of said perimeter and being spaced apart from said perimeter at a point circumferentially displaced from said sector. Applicant states that support is contained in the specification on page 3, lines 1-20 and pages 11-12. Applicant should specifically describe the section of the specified portion of the specification that states the claim 2 limitation.

3. Claims 1-10 are objected to because of the following informalities: Claim 1 contains a misspelling of word "perimeter" in line 3. Appropriate correction is required.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 recites the limitation "said perimeter" in line 4. There is no clear antecedent basis for this limitation in the claim. The body's aperture and the cover, each have a perimeter, it can't

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be determined which perimeter is meant. Claims 2 and 3 contain further references to "said perimeter" which are indefinite for the same reason.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

8. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Hupp et al.('687) (Hupp).

Hupp discloses a container comprising a body having an aperture with a perimeter therearound, a cover having a perimeter therearound which corresponds to the perimeter around the aperture of the body, a seal formed by the mating of the top surface of bead (32) with the underside or inner surface of groove (34), the seal is at least partially juxtaposed to the perimeters of the body's aperture and the cover, and a slider (36) which is spaced apart from the seal in an axial direction rather than a radial direction, a track is formed by the upper surfaces or outer surfaces of groove (34) which the slider is in contact with and which restrict radial movement of the slider, the track is juxtaposed to, but spaced apart from the seal, the slider is movable within the track, an auxiliary track not juxtaposed with the seal is formed by the portions of the bead (32) situated behind the hinge line (45) in Fig. 1.

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9. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by EPO reference No. ('170) to Schick et al. (Schick).

10. Claims 1-3, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by WIPO reference No. ('995) to Schmaling et al. (Schmaling).

Schmaling discloses the use of one zipper (62) having complementary mating teeth portions, the zipper forms the seal when closed, there are two sliders (64) associated with the zipper, only one slider is needed to meet the claim limitation. When both of the sliders are moved from the open position shown in Fig. 1, there will be two portions of the seal, one portion formed by the engaged portions of the zipper associated with one of the sliders and another portion formed by the engaged portions of the zipper associated with the other slider. With respect to one of the sliders, there is a seal and track associated with the one slider and another seal and track not associated with the one slider.

11. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into group 3720 will be promptly forwarded to the examiner.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is (703)-308-1035.


Stephen Castellano
Primary Examiner
Art Unit 3727

November 14, 2001